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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3804 OF 2003
IN
SUIT NO.3550 OF 2003

Erna Adeline Negandhi)..Plaintiff

Versus

Chhotubhai R. Negandhi and others)..Defendants

Mr.Zubin Behram Kamdin with Ms.Nayna Dave i/b.Mulla & Mulla & Craigie Blunt & Caroe for the Plaintiff.

Mr.Pradeep Sancheti with Mr.Darshan Mehta i/b.Dhruve Liladhar & Co. for Defendant Nos.1 and 3.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 12TH JUNE 2006

P.C.:

. This Notice of Motion has been taken out for several reliefs. The main relief which the Plaintiff is now pressing is for an injunction against the Defendants from in any manner dealing with or disposing of or alienating or encumbering or transferring or creating any third party rights or interest in or parting with possession of or entering upon or using or occupying or enjoying or creating any right, title or interest in favour of any one else in respect of Flat No.704, 7th Floor, Prahlad Building, situate at 17, Linking Road, Santa Cruz (West), Bombay 400 054. The Plaintiff has

also sought an injunction against the Defendants from preventing her or her children or grand-children from entering or staying in the suit flat whenever they visit India.

2. One Anant Negandhi, the Plaintiff's husband and the brother of Defendant No.1 expired on 10th December 1989. He had executed a Will dated 10th November 1989 under which the aforesaid flat was bequeathed to his wife, the Plaintiff herein. Defendant No.1 has admittedly been residing in the suit flat ever since it was purchased by Anant in 1978. It appears that often the deceased and his family visited India from the United States of America where they lived and stayed in the aforesaid flat along with Defendant No.1 and his family. According to the Plaintiff, in 1999 when she and her children visited India, she was prevented from residing in the aforesaid flat by Defendant No.1. The Plaintiff then took up proceedings to get the Will of the deceased Anant probated. The Probate was obtained on 19th January 2000.

3. Defendant No.1 relies on the letter written by the deceased Anant to the Society which is annexed to the Plaint at Exhibit "M". This letter is purported to have been written by him on 3rd January 1987. The letter states that the suit flat was purchased by him

for Defendant No.1 and his family as he had helped him financially. It further mentions that Defendant No.1 and his family have been residing in this flat since November 1978 and all outgoings/maintenance expenses are being paid by him ever since he occupied the above flat. A request was then made to the Society to transfer the share certificate to the name of Defendant No.1. The flat was always purchased with a view to hand over possession of the same as well its title to him, contends Defendant No.1. According to the learned Advocate for Defendant No.1, in the year 1987 transfers of flats in co-operative housing societies, were effected merely by means of a letter seeking transfer of shares and, therefore, this letter dated 3rd January 1987 must be treated as one transferring the flat to Defendant No.1. It is also submitted that in any case the Suit is barred by limitation since the cause of action had arisen thirteen years prior to the filing of the Suit, when Defendant No.1 had allegedly refused to allow the Plaintiff and her children to reside in the suit premises. It is alleged that the Plaintiff was well aware in 1990 itself that Defendant No.1 was not willing to vacate the suit premises and hand over possession to her. The Suit being filed in 2003 is barred by limitation.

4. Assuming that such a letter which is at Exhibit

"M" to the Plaint had been written by the deceased Anant, it is difficult to accept that the suit flat could have been transferred to the name of Defendant No.1 without there being either a Gift Deed or any other instrument of transfer. A mere letter transferring shares would not in my opinion, be sufficient to constitute a transfer of the suit flat to Defendant No.1. In my view, therefore, prima facie, this letter at Exhibit "M" cannot be accepted.

5. The question as to whether the Suit is barred by limitation or not will be decided when the Suit is heard and not at the present stage. If the period of time required to obtain the Probate is excluded, the Suit, prima facie, would not be barred by limitation. However, as I have already stated, this question of limitation cannot be decided at the prima facie stage.

6. Hence, in my view, the letter at Exhibit "M" to the Plaint does not transfer the flat to Defendant No.1 and hence the injunction contained in prayer (c)(i) must follow.

7. As regards prayer clause (c)(ii), the learned Counsel for the Plaintiff submits that the Plaintiff and her family do visit India at times and instead of availing of accommodation in a hotel, it would be proper

to permit the Plaintiff and her family to reside in the suit premises when they visit India on occasions.

8. In my view, prayer clause (c)(ii) need not be granted. Defendant Nos.1 and 2 are senior citizens and it would be inappropriate to have an unfamiliar person residing with them albeit for a couple of days, although that person may be their relative.

9. Hence, Notice of Motion made absolute in terms of prayer clause (c)(i) of the Motion.